

nondiscriminatory terms. Finally, when U S WEST provides out-of-LATA listings via National Directory Assistance, U S WEST will not use the listings in its own regional database for subscribers of other LECs within U S WEST's region. Instead, U S WEST will rely on the nationwide database for these listings just as CLECs must.

Strict enforcement of section 272 also might force U S WEST to abandon the easy 1-411 dialing format—a key part of what makes National Directory Assistance a convenient and beneficial service to consumers. While U S WEST is committed to making 1-411 dialing capability available to CLECs for resale to their subscribers, it simply is not feasible to make access to 1-411 dialing capability available to non-CLECs or to CLECs that wish to resell the National Directory Assistance service to customers other than their own local exchange subscribers. Such access is infeasible because there is no reasonable way to give a customer dialing “1-411” a choice among multiple directory assistance providers. For the simple dialing option to work, a customer's local exchange provider must be able to route that customer's 1-411 request automatically to a single directory assistance provider. But if U S WEST automatically routes all of its subscribers' 1-411 calls to its own National Directory Assistance affiliate, it arguably could be guilty of violating section 272(c)'s prohibition against discriminating in favor of an affiliate.

The only way around this problem, aside from forbearance, would be to require customers to go through the extra step of dialing additional digits or responding to some type of menu each time they want listing information.^{32/} But more complicated dialing schemes would

^{32/} It might in theory be possible to have customers preselect directory assistance providers just as they do long distance carriers, but the per-customer revenues from directory assistance are too small to justify the substantial costs of implementing such a system.

be far less desirable to customers. And abandoning 1-411 dialing is not necessary to preserve competition: AT&T's trial national directory service uses the even simpler and easy-to-remember "00," and other interexchange carriers could offer similar dialing alternatives. Accordingly, application of section 272 is unnecessary.

2. Forbearance in this Case Satisfies Section 10(a)(2).

Under section 10(a)(2), the Commission must evaluate whether the application of section 272 is "necessary for the protection of consumers."^{33/} As discussed above, the principal effect of applying section 272 to National Directory Assistance would be to increase substantially the costs of providing such service, forcing U S WEST to choose between charging higher rates for the service and not offering it at all. As in the case of the services addressed in the 272 Forbearance Order, "[n]either result would benefit consumers."^{34/}

Indeed, the high costs of complying with section 272 probably would cause U S WEST to abandon National Directory Assistance in some or all markets. U S WEST's analysis suggests that creating purely intraLATA National Directory Assistance systems—that is, databases and operator centers that serve a single LATA only—would be uneconomical even in LATAs with large populations: U S WEST's costs would increase so much that it could not offer the service at a competitive price. Similarly, providing National Directory Assistance through a separate affiliate would be extremely inefficient and substantially increase the cost of providing the service. As U S WEST has shown in a previous proceeding, the costs of establishing the infrastructure and administration for a separate affiliate can run well into the tens

^{33/} 47 U.S.C. § 160(a)(2).

^{34/} 272 Forbearance Order ¶ 90.

of millions of dollars.^{35/} Here, too, a separate affiliate requirement would dramatically increase the cost of National Directory Assistance and eliminate more than half the potential consumer benefit that competition may produce in the future.

As the Commission has observed in other contexts, competition provides the most effective means of protecting the interests of consumers.^{36/} The experience with U S WEST's National Directory Assistance provides a perfect illustration of this principle. U S WEST's entry into the market for nonlocal directory assistance has given its local exchange customers a new, lower cost alternative to service offered by their presubscribed long distance carriers. It also has prompted AT&T to develop the new nationwide directory assistance option discussed above. Significantly, AT&T offers this service only on a trial basis and markets it only where it faces competition. If U S WEST were forced to withdraw from the market, AT&T could easily discontinue the new service and return to charging customers separate fees for each area code from which listings are requested. In short, U S WEST's full and vigorous participation in the market gives consumers added protection by ending the long distance carriers' stranglehold on nonlocal directory assistance. Hampering U S WEST's ability to compete effectively, far from

^{35/} See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, CC Docket No. 95-20, Comments of U S WEST, Inc. (April 7, 1995).

^{36/} See, e.g., Access Charge Reform, CC Docket No. 96-262, First Report and Order, 11 FCC Rcd 15982 (1997) ¶263 ("Competitive markets are superior mechanisms for protecting consumers . . . Accordingly, where competition develops, it should be relied upon as much as possible to protect consumers and the public interest."); Merger of MCI Communications and British Telecommunications PLC, CC Docket No. 97-302, Memorandum Opinion and Order, 12 FCC Rcd. 15351 (1997) ¶ 204 ("Competition can protect consumers better than the best-designed and most vigilant regulation.").

protecting consumers, would eliminate the market-based protections that have just begun to emerge.

Finally, any danger of cost-shifting or cross-subsidization is limited by the Act's prohibition on cross-subsidization, the Commission's accounting safeguards, and the parallel restrictions imposed by the states.^{37/} These regulations would apply to National Directory Assistance even if the service is provided on an integrated basis.^{38/}

3. Forbearance in this Case Satisfies Section 10(a)(3).

Forbearance is clearly warranted under both the terms of section 10(a)(3) and the Commission's application of that provision in its recent 272 Forbearance Order. Under section 10(a)(3), the Commission must evaluate whether forbearance is "consistent with the public interest."^{39/} Section 10(b) directs the Commission, in conducting this public interest analysis, to consider whether forbearance will promote competition. The section further provides that a determination that forbearance will promote competition "may be the basis for finding that forbearance is in the public interest."^{40/} Because U S WEST's National Directory Assistance service clearly increases competition in the nonlocal directory assistance market, the Commission can forbear from applying the separate affiliate requirements without considering any other public interest factors.

^{37/} See, e.g., 47 U.S.C. § 254(k).

^{38/} See Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539, 17560-82 (1996).

^{39/} 47 U.S.C. § 160(a)(3).

^{40/} 47 U.S.C. § 160(b).

In its 272 Forbearance Order, the Commission found that forbearance with respect to BellSouth's reverse directory services was consistent with the public interest because (i) consumers would benefit from the integrated provision of the service, (ii) the market for the service was likely to become increasingly competitive, and (iii) forbearance would promote competition.^{41/} Forbearing from applying section 272 to U S WEST's National Directory Assistance service is consistent with the public interest for the identical reasons.

Consumers would benefit from U S WEST's continued provision of National Directory Assistance on an integrated basis. They would benefit by being able to dial a single, easy-to-remember number to obtain listings from anywhere in the country, without having to know the area code in advance; by being able to obtain two listings at a single price, even if the listings are in different area codes; and by paying a lower price than that offered by interexchange carriers. The value consumers place on these advantages is evident from their enthusiastic response to the service: Still in its first year of operation, the National Directory Assistance system already receives tens of thousands of calls per day. And as discussed above, the benefits of National Directory Assistance depend to a powerful degree on the continued ability of U S WEST to provide the service on an integrated basis. Just as in the case of BellSouth's reverse directory services, providing National Directory Assistance through a separate affiliate would raise the cost of the service dramatically, forcing U S WEST to increase prices or discontinue the service.^{42/}

^{41/} 272 Forbearance Order ¶¶ 95-97.

^{42/} See *id.* ¶ 95.

Furthermore, the market for nonlocal directory assistance is increasingly competitive. U S WEST's National Directory Assistance service faces not only the types of competitors the Commission cited in the 272 Forbearance Order—for example, Internet services and electronic white and yellow pages^{43/}—but also established interexchange carrier services and AT&T's new "00 INFO" service.

Forbearing from the application of section 272 would promote such competition. Requiring U S WEST to transfer its National Directory Assistance business to a separate affiliate would "prohibit it, and only it, from realizing economies of scale from offering those services . . . on an integrated basis."^{44/} It thus would hamper U S WEST's ability to compete, since its competitors are free to integrate nonlocal directory assistance services with other offerings. Forbearance, on the other hand, would allow U S WEST to compete on a vigorous and equal basis. It is not just U S WEST's customers that would benefit from such competition. Users of the long distance carriers' directory assistance service would benefit as well: AT&T's "00" option, still being offered on a trial basis, is far more likely to be retained if U S WEST remains a strong competitor. Other long distance carriers may be expected to offer similar new services if U S WEST remains in the market. Thus, U S WEST's full and unhindered participation unquestionably "would promote competitive market conditions."^{45/}

Accordingly, the Commission should find that forbearance is consistent with the public interest. Because the other statutory criteria are satisfied as well, section 10 requires that

^{43/} Id. ¶ 96.

^{44/} Id. ¶ 97.

^{45/} Id. ¶ 94.

the Commission forbear from applying section 272 to U S WEST's National Directory Assistance.

III. RESTRICTING U S WEST'S ABILITY TO PROVIDE NATIONAL DIRECTORY ASSISTANCE WOULD RAISE SERIOUS FIRST AMENDMENT CONCERNS.

Any decision that U S WEST must provide National Directory Assistance using only intraLATA facilities or through a separate affiliate would raise serious First Amendment concerns. As shown above, such a decision would impose a substantial economic burden on the National Directory Assistance service. And because such restrictions would not apply to local directory assistance provided over interLATA facilities, the regulation of National Directory Assistance would rest on a distinction based on the content of the speech involved in the two services. Indeed, because U S WEST's National Directory Assistance and local directory assistance services both utilize interLATA facilities to retrieve information a customer has requested, the only difference between the two services is the content of the communication from U S WEST (i.e., a non-local number rather than a local one). Thus, to apply different rules to National Directory Assistance would be to regulate the speech of U S WEST's operators based on its content.

As an initial matter, the speech at issue here is not commercial speech, and any content-based regulation of the speech would therefore be presumptively invalid. The primary test for identifying commercial speech is whether the speech proposes a commercial transaction, as in the case of an advertisement.^{46/} Under that test, U S WEST's provision of a telephone listing does not constitute commercial speech. U S WEST provides the listing in return for a

^{46/} See Board of Trustees of State University of N.Y. v. Fox, 492 U.S. 469, 473-74 (1989).

small fee (just as a newspaper provides information in exchange for payment), but the information is not provided as part of a proposal for a commercial transaction. Because directory assistance information does not constitute commercial speech, any restriction on the telephone listings that a carrier may provide through directory assistance is a “presumptively invalid” content-based speech regulation.^{47/}

Even if the provision of directory assistance did constitute commercial speech, content-based regulation of this speech still would violate the First Amendment. Although the government may regulate commercial speech that is misleading or concerns unlawful activity,^{48/} the information provided by U S WEST through National Directory Assistance clearly does not fall within either of these categories. Accordingly, the government’s regulation would have to be scrutinized under a three-part test under which the government would have to demonstrate, among other things, that the speech restriction directly and materially advances a substantial government interest.^{49/} Neither a ban on U S WEST’s provision of nonlocal directory information nor a separate affiliate requirement could pass this test.

Presumably, the government’s asserted interest in such a speech restriction would be the same as its claimed interest in section 271 generally—to encourage competition in the local telephone market by prohibiting BOCs from providing certain interLATA services until

^{47/} R.A.V. v. St. Paul, 505 U.S. 377, 382 (1992).

^{48/} Central Hudson Gas & Electric Corp. v. Public Service Comm’n of N.Y., 447 U.S. 557, 563-64 (1980).

^{49/} Id. at 564-65.

they take sufficient actions to open the local telephone market.^{50/} Even assuming that interest to be substantial, banning or requiring a separate affiliate for the provision of National Directory Assistance would not directly and materially advance that interest. “[A] governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree.”^{51/} Regulating National Directory Assistance would not “in fact alleviate” the purported lack of competition in the local telephone market. Indeed, the only clear competitive effect of such regulation would be to reduce competition in the provision of directory assistance services. Section 251 and other provisions of the Act already directly obligate U S WEST to undertake actions to open the local market to competition. Accordingly, imposing a ban or separate affiliate requirement on National Directory Assistance would have, at most, an indirect and immaterial effect on U S WEST’s actions to open the local exchange market.

At the very least, therefore, regulation of National Directory Assistance would raise serious First Amendment concerns and run counter to the well-settled principle that statutes should be construed where possible to avoid constitutional questions.^{52/} These constitutional

^{50/} The government also has an interest in preventing any attempt by BOCs to leverage any local monopoly power into monopoly power over interLATA services. However, this concern is not applicable to U S WEST’s provision of National Directory Assistance since, among other things, no entry barriers prevent long distance carriers from offering a competing service such as AT&T’s new “00 INFO” service.

^{51/} Rubin v. Coors Brewing Co., 115 S. Ct. 1585, 1592 (1995) (emphasis added).

^{52/} See, e.g., Edward I. DeBartolo Corp. v. Florida Gulf Coast Trades Council, 485 U.S. 568, 575 (1988); NLRB v. Catholic Bishop of Chicago, 440 U.S. 490, 500 (1979); Hooper v. California, 155 U.S. 648, 657 (1895).

concerns counsel in favor of permitting U S WEST to provide National Directory Assistance services without onerous regulation.

William T. Lake
John H. Harwood II
Samir Jain
Todd Zubler
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

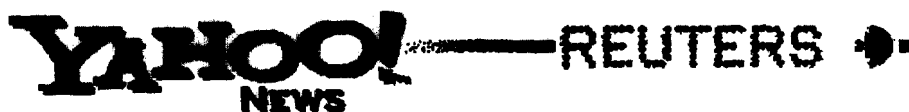
March 11, 1998

Robert B. McKenna
Richard A. Karre
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

Counsel for

U S WEST COMMUNICATIONS, INC.

ATTACHMENT A



[[Yahoo](#) | [Write Us](#) | [Search](#) | [Info](#)]

[[Index](#) | [News](#) | [World](#) | [Biz](#) | [Tech](#) | [Politic](#) | [Sport](#) | [Scoreboard](#) | [Entertain](#) | [Health](#)]

[[Reuters](#) | [Wired](#) | [ZDNet](#)]

Previous Story: [Global Semiconductor Revs Seen At \\$300 Bln in 2001](#)

Next Story: [Adobe Wins Patent Lawsuit Against Quantel](#)

Monday September 22 2:50 PM EDT

AT&T Starts Trial Of New Directory Service

BASKING RIDGE, N.J. - AT&T said today it is beginning a market trial of a new national directory assistance service that allows AT&T customers to get a telephone listing for any place in the United States with one call -- even if they don't have the area code or exact city.

In contrast to the industry trend to provide fully automated directory assistance, the company said its AT&T 00" INFO Service features specially trained information assistants who will stay on the line for the entire call.

They will search for a directory listing with as little information as a partial name and a locality or state and will stay with the customer through the end of the call when they provide the requested information.

During the market trial -- in Seattle, Denver, Phoenix, Minneapolis, and Portland, Ore. -- AT&T is offering the new service at the same 95-cent price that it charges for conventional directory assistance.

AT&T customers in the five test markets can use 00" INFO from their home phones, or when they are away from home, by dialing 1-800-CALL-ATT.

Copyright, Reuters Ltd. All rights reserved

[Help](#)

Previous Story: [Global Semiconductor Revs Seen At \\$300 Bln in 2001](#)

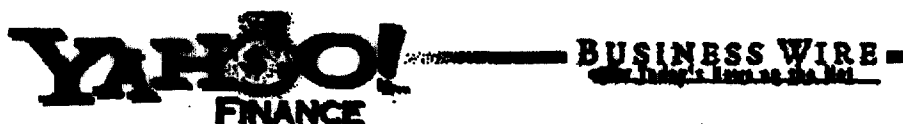
Next Story: [Adobe Wins Patent Lawsuit Against Quantel](#)

[[Index](#) | [News](#) | [World](#) | [Biz](#) | [Tech](#) | [Politic](#) | [Sport](#) | [Scoreboard](#) | [Entertain](#) | [Health](#)]

Reuters Limited

[Questions or Comments](#)

ATTACHMENT B



[[Yahoo](#) | [Write Us](#) | [Search](#) | [Headlines](#) | [Info](#)]

[[Business](#) - [Company](#) - [Industry](#) - [Finance](#) - [PR Newswire](#) - [Business Wire](#) - [Quotes](#)]

Wednesday October 22 11:08 AM EDT

Company Press Release

AT&T Extends "00" INFO Directory Assistance Service Trial to 23 States, and To All AT&T Calling Card Customers

BASKING RIDGE, N.J.--(BUSINESS WIRE)--Oct. 22, 1997--

--AT&T Brings Back Personal Service to Directory Assistance--

AT&T today announced that it will extend the market trial of its new "Double-0 Info" national directory assistance service to 23 states and to all AT&T Calling Card customers nationwide. The new AT&T "00" INFO(SM) Service allows AT&T customers to obtain a telephone listing for any place in the United States with one simple phone call -- even if they don't have the area code or exact city.

The extended "00" INFO residential service trial begins today for all AT&T customers in the BellSouth and US West service areas. The BellSouth service area covers nine states: Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, Tennessee, and North and South Carolina. The 14 states in the US West service area include Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, Oregon, Utah, Washington, Wyoming, and North and South Dakota.

In addition, all AT&T Calling Card customers can use "00" INFO by dialing 1 800 CALL ATT (R).

"'00' INFO Service is a winner," said Howard McNally, vice president of AT&T Consumer Markets Division. "Based on overwhelming customer response to the service during the early weeks of the market trial, we're moving quickly to extend the test to more AT&T customers across a broader geographic base."

The service trial began last month in Seattle, Denver, Phoenix, Minneapolis, and Portland, Ore.

AT&T "00" INFO Service is bringing back the personal touch and providing directory assistance the way customers really want it. In marked contrast to the industry trend to provide fully automated directory assistance, "00" INFO features personal, courteous, helpful service from specially trained AT&T information assistants who will stay on the line for the entire call.

From the moment they greet the customer by introducing themselves, AT&T assistants are there to help customers simplify their lives, by searching for a directory listing with as little information as a partial name and a locality or state. And AT&T assistants will stay on the line with customers, using enhanced search features to find the listings they want, and even the address and zip code, if that's what they need.

AT&T "00" INFO takes directory assistance to a higher level of customer service, providing a renewed emphasis on personal service that is supported by several new search capabilities:

-- A new expanded search capability allows AT&T information

assistants to extend a directory search to surrounding communities when they can't find a requested listing in a designated city or town -- even if the caller doesn't know what those communities are.

-- A key word search function allows AT&T information assistants

to search for a business listing when the caller doesn't know the full or exact name of the business. This search will find the listing if the key word appears anywhere in the name.

AT&T's new "00" INFO Service makes it easier for callers to use directory assistance. They no longer need to remember multiple numbers for directory assistance. And they don't need to know the area code. Customers need only dial one simple number to reach an AT&T information assistant who will help them find telephone listings anywhere in the United States.

During the market trial, AT&T is offering the new AT&T "00" INFO Service at the same 95-cent price that it charges for conventional directory assistance. With "00" INFO Service customers can get unlimited listings per call, but pay 95-cents for every two listings.

The AT&T "00" INFO directory assistance service trial is limited to listings in the United States.

Contact:

Karyn Vaughn-Fritz
908/221-7974 (office)
500/677-9087 (home)
kvaughn@mail.att.net

or
Pat Mallon
908/221-3271 (office)
800/258-0000 PIN 2202993
pmallon@mail.att.net

More news for referenced ticker symbols: I, and related industries: Computer-Telecom, computer, telecommunications.

Help

Copyright © 1997 Business Wire. All rights reserved. All the news releases provided by Business Wire are copyrighted. Any forms of copying other than an individual user's personal reference without express written permission is prohibited. Further distribution of these materials is strictly forbidden, including but not limited to, posting, emailing, faxing, archiving in a public database, redistributing via a computer network or in a printed form.

Important Disclaimers and Legal Information
Questions or Comments?